

NOTICE

Decision filed 02/10/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 120052-U

NO. 5-12-0052

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

GAYLE VAN SANT,
Plaintiff-Appellee,

v.

DUPO COMMUNITY UNIT SCHOOL DISTRICT
NO. 196,
Defendant-Appellant.

) Appeal from the
) Circuit Court of
) St. Clair County.
)
) No. 12-L-62
)
) Honorable
) Lloyd A. Cueto,
) Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Donovan and Justice Wexsten concurred in the judgment.

ORDER

¶1 *Held:* The circuit court abused its discretion in granting a temporary restraining order to the plaintiff requiring the defendant school district to make retirement incentive payments to her under the terms of a collective bargaining agreement where the plaintiff did not allege or prove that she exhausted the grievance procedures set forth in the collective bargaining agreement pursuant to section 10(c) of the Illinois Educational Labor Relations Act (115 ILCS 5/10(c) (West 2010)) and could not show that she had no adequate remedy at law should she wait for said payments to be awarded upon final hearing.

¶2 The defendant, Dupo Community Unit School District No. 196 (School District), appeals, pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010), a temporary restraining order (TRO) entered by the circuit court of St. Clair County on February 2, 2012, which ordered the School District to "cease paying the reduced amount of [the] [p]laintiff's pay, and pay the amounts it was paying thirty days ago." For the following reasons, we reverse. The plaintiff, Gayle Van Sant, also filed a motion to supplement the record with two documents that were not before the circuit court. We deny the motion to supplement the

record.

¶ 3

FACTS

¶ 4 On February 2, 2012, the plaintiff filed a complaint and a motion for a TRO in the circuit court of St. Clair County. In the complaint, the plaintiff alleges that she is a teacher employed by the School District and, on or about April 16, 2009, had submitted a request for resignation in the 2012-2013 school year. From April 2009 until approximately January 2012, the School District paid her an additional 6% of her salary per year as a retirement incentive. On or about January 9, 2012, however, the School District informed the plaintiff that she should not have qualified for the incentive based on the collective bargaining agreement (CBA) in effect between the School District and the Dupont Federation of Teachers. Two days later, the School District informed the plaintiff that the School District made the decision to revoke the retirement incentive, and thereafter requested a refund of the retirement incentive payments she had been paid. The plaintiff alleged that she would not have submitted her resignation for the 2012-2013 school year absent the School District's promise to pay her the incentive payments. Count I of the complaint alleges a cause of action for a breach of contract, and count II alleges promissory estoppel.

¶ 5 In her motion for a TRO, the plaintiff requests that the circuit court enjoin the School District from reducing or refusing to pay the retirement incentive, failing to restore the incentive payments, and revoking any payments already made to the plaintiff. The School District filed a response to the motion for a TRO the same day, attaching the CBA then in effect. Article IX of the CBA sets forth a grievance procedure for any complaints "that there has been a violation, misinterpretation or inequitable application of any of the provisions of this Agreement, or that one or more bargaining unit member(s) has been treated unfairly or inequitably according to established written policy." The grievance procedure provides for appeal to the superintendent, the board of education, and finally to binding arbitration under

the Voluntary Labor Arbitration Rules of the American Arbitration Association. Article XIII, section 10, of the CBA contains a detailed explanation of the requirements for qualifying for retirement incentive payments.

¶ 6 According to the circuit court's order, entered the same day as all of the previously discussed filings, the circuit court heard oral argument on the plaintiff's motion for a TRO. The circuit court entered the TRO, finding as follows:

"Temporary Restraining Order is entered. Plaintiff will suffer irreparable harm, including a change in her retirement benefits, a change in her retirement status, changes in employment status and the ability to plan her life if this ORDER is not entered.

Defendant is to cease paying the reduced amount of Plaintiff's pay, and pay the amounts it was paying thirty days ago.

The parties are to set a hearing on preliminary injunction within 21 days."

¶ 7 The School District filed a timely notice of appeal pursuant to Illinois Supreme Court Rule 307(d) (eff. Feb. 26, 2010).

¶ 8 ANALYSIS

¶ 9 This court has previously set forth the requirements for a temporary restraining order, entered with notice as was the case here, as well as our standard of review, as follows:

"A temporary restraining order issued with notice and a preliminary injunction issued with notice are the same type of relief and, whether referred to under either term, require the same elements of proof. [Citations.] The party seeking a preliminary injunction or temporary restraining order must establish that it has a protectable right, that it will suffer irreparable harm if injunctive relief is not granted, that its remedy at law is inadequate, and that there is a likelihood of success on the merits. [Citation.] The party seeking relief is not required to make out a case which would entitle him

to relief on the merits; rather, he need only show that he raises a 'fair question' about the existence of his right and that the court should preserve the status quo until the case can be decided on the merits. [Citation.] In evaluating these factors, we are mindful that the scope of review in an interlocutory appeal is normally limited to determining whether the trial court abused its discretion in granting or refusing the requested interlocutory relief. [Citations.]" *Jacob v. C&M Video, Inc.*, 248 Ill. App. 3d 654, 664 (1993).

¶ 10 With the foregoing requirements and our standard of review in mind, we turn to the School District's arguments on appeal. First, the School District argues that the circuit court abused its discretion in entering the TRO because the plaintiff failed to exhaust the grievance procedure set forth in the CBA. We agree. Section 10(c) of the Illinois Educational Labor Relations Act provides that CBAs "shall contain a grievance resolution procedure which shall apply to all employees in the unit and shall provide for binding arbitration of disputes concerning the administration or interpretation of the agreement." 115 ILCS 5/10(c) (West 2010). The CBA in this case contains such a procedure in article IX. An employee subject to a CBA must exhaust contractual remedies before filing an action in the circuit court requesting a judicial remedy, and must allege on the face of her pleading that grievance procedures were followed and exhausted. *Quist v. Board of Trustees of Community College District No. 525*, 258 Ill. App. 3d 814, 818 (1994). Here, the plaintiff has made no such allegation. Instead she attempts to place her claim for restoration of her incentive retirement benefits outside of the scope of the CBA by characterizing the School District's previous payments to her as an outside agreement. We are not persuaded. The terms and conditions of incentive retirement payments are within the scope of the CBA, and the CBA exclusively governs those payments. Because she has not exhausted the grievance procedures, the plaintiff cannot show the likelihood of success on the merits as required for the issuance of

a TRO.

¶ 11 In addition, the School District argues that the plaintiff failed to show she had an inadequate remedy at law. We find merit to this contention as well. The plaintiff's prayer for relief in her complaint is for money damages, and her motion for a TRO is nothing more than a request that the circuit court order the School District to pay money to her. The injury which the plaintiff complains of, which is the breach of a contract or promise to pay money to her, is capable of being measured and corrected by an award of money damages alone. See *Kaplan v. Kaplan*, 98 Ill. App. 3d 136, 142 (1981). Because there is no evidence that the School District is likely to become insolvent such that the plaintiff could not collect a money judgment, the plaintiff is not entitled to injunctive relief. See *Id.* at 142. For this additional reason, the circuit court abused its discretion in granting the TRO.

¶ 12

CONCLUSION

¶ 13 For the foregoing reasons, the February 2, 2012, order of the circuit court of St. Clair County, which granted a TRO in favor of the plaintiff, is reversed. The plaintiff's motion to supplement the record is denied.

¶ 14 Order reversed; motion to supplement denied.